IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3106 of 1995
With
SPECIAL CIVIL APPLICATION No. 2426 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PK VASAVDA & ORS - Petitioner(s)
Versus
STATE OF GUJARAT & ORS & 2 - Respondent(s)

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Appearance :
MR BP TANNA, ld. Senior advocate with MR NIKHIL KERIAL, ld. Advocate for the Petitioners of Special Civil Application No.3106 of 1995
MR PV HATHI, ld. Advocate for the petitioners of Special Civil Application No.2426 of 1995
MR MAULIK NANAVATI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR KM PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/2/2007

ORAL JUDGMENT

As both these petitions are inter connected and raising common question of law and facts, they are being disposed of by this common judgment and order.

2. Special Civil Application No.3106 of 1995 is filed under article 226 of the Constitution of India by the petitioners who were at the relevant time working in the cadre of Assistant Commissioner of Labour (hereinafter referred to as "the ACL") for an appropriate writ, order and/or direction quashing and setting aside the impugned order dated 23-3-1995 of the State Government, respondent No.1 herein fixing the seniority of respondent No.3 i.e. one Shri AK Patel and quashing and setting aside the order dated 24/28-3-1995 giving promotion to the respondent No.3 to the post of ACL. By way of amendment, it is also prayed alternatively to direct the respondent authorities to regularize the services of the respondent No.3 Shri AK Patel and subsequently fix his seniority on that basis from 1978 or from 1976 when for the first time the respondent No.3 had chosen to appear before the GPSC examination and accordingly directing the respondent Nos.1 and 2 to pass appropriate orders about regularization of the services and consequently fixation of seniority of respondent No.3 from the year 1978 or 1976.

3. Special Civil Application No.2426 of 1995 is filed by the respective petitioners who were initially working in the cadre of

Government Labour Officer (hereinafter referred to as "the GLO") for an appropriate writ, order and/or direction quashing and setting aside the order dated 23-3-1995 by which the seniority of the respondent No.3 Shri AK Patel has been fixed in the cadre of GLO, and by which the State Government confirmed the orders contained in the Government resolution dated 14/18th December 1989 showing Shri AK Patel at serial No.46 in the final seniority list of the GLO as on 21-1-1983 considering his period of ad hoc appointment also for the purpose of seniority. By the said order, the Government also was pleased to give the date 21-4-1982 as deemed date of Shri AK Patel's promotion to the post of ACL (being the date of promotion of his junior Shri NH Dave to the said post of ACL) with the benefit of permitting Shri AK Patel to draw the difference of his pay and allowance consequent upon his promotion to the post of ACL from the said deemed date of promotion i.e.21-4-1982 onwards. It is also further prayed for an appropriate order directing the State Government to take appropriate action for re-fixing seniority of the petitioners and respondent No.3 in accordance with law and by further directing the respondent No.1 to fix seniority of Shri AK Patel, respondent No.3 herein in the cadre of GLO w.e.f. 27-6-1994, the date on which his service was regularized and it is also further prayed to quash and set aside the consequential orders dated 24-3-95 and 28-3-1995.

Factual Position:

4. Few facts are necessary for the purpose of determination of the present Special Civil Applications, as these group of petitions have chequered history. Respondent No.3 Shri AK Patel was appointed as

GLO along with other persons on *ad hoc* and temporary basis on 11-12-1972 with the condition that they were required to be replaced by the candidates selected and recommended by the GPSC. Meaning thereby, the appointment of respondent No.3 Shri AK Patel was on purely *ad hoc* and temporary basis till the regular candidates selected by the GPSC are available and that as and when the GPSC examination is held, the respondent No.3 is required to appear in the examination. It appears that after the appointment of the respondent No.3 on *ad hoc* basis, the GPSC gave advertisement for 17 posts of GLO and examinations were held by the GPSC on 16-7-1973, however, the respondent No.3 did not appear in the said examination. Again in the year 1975, the GPSC held the examination for the post of GLO, again respondent No.3 did not choose to appear. In the year 1976, when the GPSC again gave advertisement for the post of GLO and conducted examination, the respondent No.3 for the first time applied for the said post. However, the respondent No.3 was not permitted to appear in the examination as by the time, he has become age barred. It appears that thereafter the regularly selected candidates selected by the GPSC were available and therefore, by order dated 5-9-1981, the respondent No.3 was sought to be terminated. However, before the said order could be served, the respondent No.3 Shri AK Patel and one Shri KC Patel preferred Special Civil Application No.3615 of 1981 challenging the order of termination dated 5-9-1981 submitting that when they got chance to appear in the examination held by the GPSC, they are told that they have become age barred and it was also contended on their behalf that their services were required to be regularized as they were selected by departmental selection committee and that after a period of 9 years they cannot be told that they have become age barred. It appears

that it was also submitted that there are powers of age relaxation and the said power has not been exercised and therefore, it was requested to pass appropriate order of regularizing their services. At this stage, it is required to be noted and it appears from the memo of Special Civil Application No.3615 of 1981 that an impression was given before the Court that for the first time they got chance to appear in examination of GPSC in the year 1976 and they were told that they have become age barred, however, they did not disclose that earlier twice, the examinations were conducted by the GPSC for the post of GLO but they did not appear. The learned single Judge by order dated 11-9-1981 stayed the order of termination dated 5-9-1981. By interim order dated 16-3-1982, the learned Single Judge directed the respondent No.3 Shri AK Patel to make representation to the Government appealing for relaxation of the age limit under Rule 8 with Rule 16 of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 and the State Government was directed to dispose of the same by speaking order. The State Government rejected the representation on 17-4-1982 on the ground that said Shri AK Patel had got chances to appear in the GPSC examination when he was within the age limit, however, he did not avail of those chances and did not appear. That thereafter, the Special Civil Application No. 3615 of 1981 came to be finally heard by the learned Single Judge who by its judgment and order dated 26-2-1992 allowed the said Special Civil Application No.3615 of 1981 directing the respondents to regularize the services of Shri AK Patel and another in the post of GLO. Being aggrieved and dissatisfied with the judgment and order passed by the learned single Judge dated 26-2-1992 passed in Special Civil Application No.3615 of 1981 by which this Court directed the respondents to regularize the

services of the respondent No.3 as GLO, the State Government preferred LPA No.533 of 1993 making one of the grievance that while issuing the direction by the learned single Judge regarding regularization of services of the respondent No.3 and another, there is no direction as regards fixation of seniority and the same will create complications. However, while dismissing the said LPA, the Division Bench in its order dated 29-12-1993 observed that the said apprehension has no merits and the services of the original petitioner (respondent No.3 herein) and other are to be regularized in accordance with law and their seniority is to be fixed in accordance with law and in just and fair manner. That thereafter, the respondent No.3 preferred Special Civil Application No.8991 of 1993 before this Court for an appropriate order directing the respondents to immediately promote him to the post of ACL and to consider his case of deemed date of promotion to the said post and give him all consequential benefits regarding notional pay, other increments, allowances etc. It was also further prayed to direct the respondents to consider his case for promotion to the post of Deputy Commissioner of Labour. It appears that the case of the respondent No.3 Shri AK Patel was based upon the judgment and order passed by the learned single Judge passed in Special Civil Application No.3615 of 1981 and to consider the period right from 1972 as GLO. The said Special Civil Application came to be heard by the learned single Judge who by its judgment and order dated 24-3-1994 allowed the said Special Civil Application directing the respondent, State Government to fix the seniority of Shri AK Patel in accordance with law and in a just and fair manner by observing that the same should be preceded by an order of regularization and after regularization, his seniority should be dealt with accordingly. The learned single Judge also

made certain observations in para 5 which shall be dealt with hereinafter. That thereafter, the services of the respondent No.3 Shri AK Patel came to be regularized by order dated 27-6-1994. However, it was also further directed that Shri AK Patel would be treated to have been confirmed in service as GLO from the date on which he completed two years probation period as GLO and his services came to be confirmed w.e.f. 14-12-1974. Petitioners of Special Civil Application No.2426 of 1995 preferred Special Civil Application No.7757 of 1994 apprehending that they were likely to be superseded in the matter of promotion to the post of ACL and that to the post of Deputy Commissioner of Labour, if Shri AK Patel and other are put above them in the seniority list. It was their contention that they were appointed as GLO in the year 1977 after their selection by the GPSC and that the respondent No.3 Shri AK Patel's service has been regularized as GLO in the year 1994 and therefore, it was prayed for an appropriate order directing the respondent State Government to fix their seniority on the basis of their regular selection by the GPSC and to fix the seniority of Shri AK Patel and another in the cadre of GLO from any date on and after 26-2-1992 and to consider their case for promotion to the post of ACL on the basis that they are senior to Shri AK Patel and Shri KC Patel. In the said Special Civil Application, it was submitted on behalf of the State Government that only regularization order dated 27th June 1994 has been issued regularizing the services of Shri AK Patel to the post of GLO and the seniority of Shri AK Patel is not fixed. The learned single Judge also observed that the averment made in the affidavit-in-reply regarding fixation of seniority vide Government circular dated December 18, 1989 pale into insignificant in view of the earlier statement made in para 3 to the effect that the order dated 27th June 1994

has been passed for only regularizing the services of Shri AK Patel i.e. nothing to indicate that seniority of Shri AK Patel is determined. Accordingly and in view of the above observations and the affidavit-in-reply filed by the Deputy Secretary to the Government of Gujarat Shri VB Rana, petitioners of Special Civil Application No.7757 of 1994 withdrew the said Special Civil Application and the learned single Judge disposed of the Special Civil Application as withdrawn by further directing the respondent State Government to determine the seniority of the petitioners of Special Civil Application No.7757 of 1994 (now Special Civil Application No.2426 of 1995) and Shri AK Patel and Shri KC Patel in light of the observations made by this Court in Special Civil Application No.8991 of 1993 and after taking into consideration the representation made by the petitioners of Special Civil Application No.7757 of 1994 and the representation that may be made by Shri AK Patel and Shri KC Patel in accordance with law and principles of fair play and natural justice, the learned single Judge also directed the State Government to consider the judgments which have been referred to in the representation addressed by the petitioners of Special Civil Application No.7557 of 1994 and annexed thereto while deciding the question of seniority and also the judgments which may be relied upon by Shri AK Patel and Shri KC Patel. The respondent State Government were directed to fix the seniority as early as possible and preferably before 28-2-1995. That thereafter, appropos the direction issued by this Court in its order dated 28-12-1994 issued in Special Civil Application No.7757 of 1994, the State Government has passed the impugned order dated 23-3-1995 confirming the order contained in Government resolution No.CLE 1182/1880-M(1) dated 14/18th December 1989 showing Shri AK Patel at serial No.46 in the final

seniority list of GLO as on 1-1-1983 and giving 21-4-1982 as the deemed date of Shri AK Patel's promotion to the post of ACL with the benefit of permitting Shri AK Patel to draw the difference of his pay and allowance consequent upon his promotion to the post of ACL from the said deemed date of promotion i.e. 21-4-1982. Immediately on passing of the order dated 23-3-1995, a further consequential order came to be passed by the Deputy Secretary to the Government Labour and Employment Department dated 24-3-1995 appointing Shri AK Patel as ACL and thereafter again Shri AK Patel has been promoted to the post of Deputy Labour Commissioner, however, subject to final outcome of Special Civil Application No.2426 of 1995 and Special Civil Application No.3106 of 1995 (notification dated 30th December 1995). Being aggrieved by the impugned order dated 23rd March 1995 and the subsequent consequential orders and promotions of Shri AK Patel and putting Shri AK Patel as above the petitioners in the seniority list and considering the seniority of Shri AK Patel from 1974 as GLO, the petitioners have preferred Special Civil Application under Article 226 of the Constitution of India. Shri BP Tanna learned senior advocate appearing for the petitioners of Special Civil Application No.3106 of 1995 has made the following submissions;

- That the petitioners are the direct recruits in the cadre of ACL from the year 1982.
- That the respondent No.3 Shri AK Patel had been originally appointed on *ad hoc* basis on the post of GLO in December 1972 with condition that as and when the regular candidate selected by the GPSC is available, his services would be terminated.
- That along with respondent No.3 fifteen other GLOs were

appointed on *ad hoc* basis on similar condition. On 16th July 1973, the GPSC issued advertisement for 17 posts for GLO. However, the respondent No.3 did not choose to apply for regular appointment.

- ➔ That pursuant to the said selection, 17 candidates were selected by the GPSC. Out of 16 ad hoc appontees, 14 had either resigned or their services had been terminated due to availability of regular appointees.
- ➔ That the respondent No.3 and one another person i.e. Shri KC Patel though deserved to be removed, were continued by the State Government.
- ➔ In the year 1975 again, the GPSC issued advertisement for regular appointment of GLO, in this selection process also the respondent No.3 Shri AK Patel did not choose to appear.
- ➔ In the year 1976, six persons were appointed as GLO and at that stage, respondent No.3 Shri AK Patel knowing very well that he was age barred, applied. That the respondent No.3 was not allowed to compete on the ground of his being over age.
- ➔ In the year 1981, the services of the respondent No.3 had been terminated, which resulted in respondent No.3 approaching this Court by way of Special Civil Application No.3615 of 1981. This Court initially granted interim relief and the respondent No.3 continued in service and ultimately on 26-2-1992 petition came to be allowed by this Court directing the State Government to regularize the service of the respondent No.3 as he has worked for more than 9 years as GLO. That thereafter, the service of the respondent No.3 came to be regularized in the cadre of GLO w.e.f. 11-12-1972 and thereafter, his seniority was fixed and he was given

deemed date of appointment and thereafter, deemed date of promotion in the cadre of ACL.

- ➔ It is submitted that thereafter the impugned order dated 23-3-1995 came to be passed, whereby respondent No.3 had been given seniority and deemed date in the cadre of ACL from 21-4-1982. That on 24-3-1985, immediately, a day after the respondent No.3 was given deemed date, he was promoted to the post of Deputy Commissioner of Labour.

5. It is submitted by the learned counsel appearing on behalf of the petitioners that before issuing deemed date of order to the detriment of the present petitioners, the respondent State should have given an opportunity of hearing, as the respondent State should have considered the fact that the respondent No.3 had been duly favoured as he along with one another person were only persons out of the original 16 *ad hoc* appointees in the cadre of GLOs, who were not removed from the services in spite of the availability of GPSC selected candidates. It is further submitted that the respondent State also should have considered the fact that though the GPSC had initiated selection process in the year 1973 and 1975, yet the respondent No.3 Shri AK Patel had chosen not to participate and he applied for regular selection through GPSC in the selection process for the first time in the year 1976 knowing very well that by then, he had become age barred. It is submitted that thus for the first time, the respondent No.3 Shri AK Patel decided to appear for selection in the year 1976 and therefore, ***he could get benefit of regularization in the post of ACL as on date candidates who were selected pursuant to the selection of 1976 by the GPSC were appointed.*** It is submitted that when the

respondent No.3 Shri AK Patel preferred Special Civil Application No.3615 of 1981, he did not disclose and point out the Court that in the year 1973 and 1975, the GPSC had initiated selection process, however, he did not apply and/or participate and an impression was given as if after his appointment on ad hoc basis in the year 1972, for the first time the GPSC had initiated the selection process in the year 1976 and it was submitted that when he got chance to appear in the examination conducted by the GPSC, by then he had become age barred and therefore, it was the contention on behalf of the respondent No.3 to grant age relaxation and the learned single Judge considering the fact that when an occasion has arisen to appear for the GPSC examination, the respondent No.3 has become age barred and therefore, his case should have been considered for age relaxation and therefore, directed the State Government to regularize the services of the respondent No.3. It is submitted that this Court initially did not direct the State Government to regularize his service right from the beginning i.e. right from his inception as GLO. It is submitted that even in Special Civil Application No.8991 of 1993 this Court directed the State Government to fix the seniority in accordance with law and fair play. It is submitted that as such the respondent No.3 obtained the order in Special Civil Application No.3615 of 1981 and even in Special Civil Application No.8991 of 1993 suppressing the material fact that earlier the occasion did arise for appearing in the GPSC examination, however, he had chosen not to appear. It is also further submitted that neither at the time of Special Civil Application No.3615 of 1981 nor at the time of deciding Special Civil Application No.8991 of 1993, the petitioners were heard. Thereafter, it is submitted that any direction which is affecting the petitioners is not

binding to the petitioners. It is further submitted that the action of the respondent authority in regularizing the services of the respondent No.3 as GLO right from the date of his appointment as GLO on ad hoc basis and thereafter to give deemed date of promotion in the cadre of ACL are absolutely illegal and against the law laid down by the Hon'ble Supreme Court. It is further submitted that as such the respondent No.3 has never passed GPSC examination. It is submitted that even, otherwise when the respondent No.3 has applied for regularization and/or challenge the order of termination in the year 1981 only i.e. belatedly, the respondents could not have regularized the services of the respondent No.3 as a GLO from the date of his appointment as ad hoc GLO and that too defeating the rights of the petitioners and other similarly situated persons. Shri Tanna, learned counsel has further submitted that even the impugned order dated 23-3-1995 is also a non speaking order and no reasons have been assigned by the respondent authority. It is further submitted that the impugned order is a vague order. Shri Tanna has relied upon the following decisions of the Hon'ble Supreme Court.

(i) ***Santosh Kumar and others V. G.R. Chawla and others reported in (2003) 10 SCC 513***

(ii) Union of India and others V. Lalita S. Rao and others reported in (2001) 5 SCC 384

(iii) Dr. M.A. Haque and others V. Union of India and others reported in (1993) 2 SCC 213.

(iv) J & K Public Service Commission and others V. Dr. Narinder Mohan and others (1994) 2 SCC 630

(v) Direct Recruit Class II Engineering Officers' Association V. State of Maharashtra and others reported in (1990) 2 SCC 715

(vi) State of Rajasthan and others V. Rajendra K. Verma reported in (2004) 13 SCC 706

(vii) Vijay K. Dhand and others V. State of Punjab and others reported in (2004) 13 SCC 707

(viii) R.S. Garg V. State of U.P. and others reported in (2006) 6 SCC 430

(ix) Secretary, State of Karnataka and others V. Umadevi (3) and others (2006) 4 SCC 1

6. It is submitted by Shri Tanna that in spite of the fact that the decision of the Hon'ble Supreme Court in the case of Dr. M.A. Haque (supra) and Direct Recruit Class II Engineering Officers' Association (supra) were placed and/or pointed in the representation, still the respondent authority did not consider the same and granted the regularization from the date of his initial appointment as ad hoc GLO. It is therefore, submitted that the impugned order dated 23-3-1995 deserves to be quashed and set aside.

7. Shri PV Hathi, learned advocate appearing on behalf of the petitioners of Special Civil Application No.2426 of 1995 adopting the above submissions made on behalf of the petitioners of Special Civil Application No.3106 of 1995 has further submitted that even the petitioners of Special Civil Application No.2426 of 1995 preferred Special Civil Application No.7757 of 1994 with a grievance that they were likely to be superseded in the matter of promotion to the post of ACL and then to the post of Deputy Commissioner of Labour and that the respondent No.3 Shri AK Patel is likely to be placed above them in the

seniority list. The very officer who has passed the impugned order filed affidavit-in-reply and it was submitted that the respondent State has issued the order dated 27th June 1994 only regularizing the services of the respondent No.3 Shri AK Patel and no order of fixation of seniority has been passed. It is submitted that while disposing of Special Civil Application No.7757 of 1994, the learned single Judge considering the affidavit-in-reply on behalf of the State Government directed the respondent authorities to determine the seniority of the petitioners and Shri AK Patel and Shri KC Patel in light of the observations made by the Court in Special Civil Application No.8991 of 1993 and after taking into consideration the representation made by the petitioners and the representations that may be made by Shri AK Patel and Shri KC Patel in accordance with law and principles of fair play and natural justice. It is also further submitted that even the respondents State authorities were directed to consider the judgments which have been referred to in the representation addressed by the petitioners. However, either the same has not been considered and if considered, the same has been mis-interpreted. It is also further submitted that all the petitioners of Special Civil Application No.2426 of 1995 were appointed as GLO in the year 1977 after their selection by the GPSC and therefore, when the services of Shri AK Patel came to be regularized in the year 1994, more particularly by order dated 27-6-1994, Shri AK Patel even did not pass the GPSC examination and in spite of the above, the services of Shri AK Patel has been regularized w.e.f. 1974 and even the period prior to his regularization has been considered for the purpose of seniority defeating the rights of the petitioners who were appointed after due selection by the GPSC. It is therefore, submitted that in any case so far as Shri AK Patel is

concerned, he should not have been placed above the petitioners in the seniority list as he cannot march over the petitioners who were appointed by passing GPSC examination. Therefore, it is requested to allow the present Special Civil Application and to quash and set aside the impugned order.

8. Shri Maulik Nanavati, learned AGP has fairly conceded that considering the various judgments of the Hon'ble Supreme Court referred to hereinabove, Shri AK Patel could not have been granted the seniority right from 1972/1974 and could have been granted the seniority only from the date of regularization, more particularly, when respondent No.3 Shri AK Patel has not passed GPSC examination which is the statutory requirement.

9. Both these petitions are opposed by Shri KM Patel, learned advocate appearing on behalf of the respondent No.3 Shri AK Patel. He has made the following submissions.

- That services rendered by Shri AK Patel from 1972 to 1981 i.e. when he filed Special Civil Application No.3615 of 1981 cannot be regarded as ad hoc/ temporary/stopgap though the nomenclatures used in the appointment letter is “provisional and temporary basis”. It is submitted that the respondent No.3 had put in 9 years long service before he preferred Special Civil Application No.3615 of 1981 and his annual increments were released; he was permitted to cross EB; his case was under consideration for regularization in consultation with GPSC (from June 1975) and in the meanwhile, the GPSC selected candidates were available for replacement.

Therefore, it is submitted that though the appointment was purportedly on temporary and provisional basis, such a long service rendered cannot be treated as temporary/ad hoc/stopgap. In support of his above submission, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Rudrakumar Sain and others V. Union of India and others reported in AIR 2000 SC 2808 (para 20)*** and in the case of ***S.N. Dhingra and others V Union of India and others reported in (2001) 3 SCC 125 (para 9)***.

- ➔ That the service of the respondent Shri AK Patel was regularized by order dated 27-6-1994 w.e.f. the date next to the expiry of two years period from the date of joining the service and the order of regularizing the service with retrospective effect is passed in consultation with GPSC and GAD.
- ➔ That the aforesaid order dated 27-6-1994 regularizing the service of Shri AK Patel with retrospective effect has not been challenged in either of the petitions. It is submitted that the seniority is only consequential to the order of regularization. Once the services are regularized from back date, such seniority has to be counted from the date on which the services are regularized.
- ➔ That in absence of challenge to the basic order regularizing the services of the respondent, the challenge to the consequential order regarding seniority is not tenable. In support of his above submission he has relied upon the following decisions of the Hon'ble Supreme Court:

(i) Santoshkumar V. State of A.P. Reported in (2003) 5 SCC 511

(ii) Direct Recruit Class II Engineering Officers' Association V. State of Maharashtra and others reported in (1990) 2 SCC 715.

(iii) Rudrakumar Sain and others V. Union of India and others reported in AIR 2000 SC 2808 (para 20).

(iv) G.P. Doval and others V. Chief Secretary, Govt. of U.P. and others reported in (1984) 4 SCC 329.

10. It is further submitted by Shri Patel that the orders passed by this Court in earlier round of litigation directing regularization in service have attained finality. It is submitted that this Court took into account several factors such as length of uninterrupted service, selection of the respondent by a special committee (which included representative of GPSC), the case of the respondent was recommended for regularization to GPSC etc. It is submitted that even the direction issued by this Court in its order dated 24-3-1994 in Special Civil Application No.8991 of 1993 and the observations made therein, more particularly in para 5 thereof means that Shri AK Patel was to be given seniority from the initial date of appointment since there is a direction to consider the case of the petitioner for promotion with reference to the case of one Shri NH Dave who was promoted on 21-4-1982. It is submitted that the said judgment having attained the finality and the Government having acted on the basis of the judgment and order in the said case, it is not open for the petitioners to challenge the seniority assigned to the respondent Shri AK Patel. He has relied upon the following two decisions.

(i) U.H. Jadhav and others V. Union of India reported in 1999 Lab IC 1433 (SC)

(ii) Chandigarh Administration V. Laxman Roller Flour Mills

Pvt. Ltd. reported in (1998) 8 SCC 326.

11. Without prejudice to the aforesaid contention, Shri Patel has submitted that even if the petitioners are to succeed, the relief can be granted only to those who have come to the Court and the respondent can at worst be placed below the petitioners of Special Civil Application No.2426 of 1995 in the cadre if GLO but cannot be placed below all those GLOs who have not challenged the seniority of the respondent and have acquiesced with the action of the Government. It is further submitted that there was no suppression on behalf of Shri AK Patel in Special Civil Application No.3615 of 1981 as alleged on behalf of the petitioners. It is submitted that in fact there are averments in Special Civil Application No.3615 of 1981 that in between 1971 and 1981, there was two batches of officers directly selected as GLO. Therefore, it is submitted that it cannot be said that there is any suppression of material fact, as alleged. Therefore, it is requested to dismiss the present Special Civil Application.

12. Heard the learned advocates appearing on behalf of the parties.

13. Shri AK Patel, respondent No.3 herein was appointed as GLO on purely ad hoc basis by order dated 11-12-1972 till the regularly selected candidate selected by the GPSC is available. It is required to be noted that the appointment of respondent No.3 and others were on a purely provisional and temporary basis and on following conditions.

"(i) Their services are liable to be terminated at any time without giving any notice or assigning any reasons therefor.

(ii) They will be replaced by the candidates selected and

recommended by the Gujarat Public Service Commission as and when made available."

It appears that by resolution dated 21th June 1974, the period of purely temporary appointment of the respondent No.3 to the post of GLO came to be further extended subject to same terms and conditions mentioned in the order dated 11-12-1972 till Public Service Commission selected candidates are available but in any case not later than the period ending on 31-12-1974. It is not in dispute that on 16th July 1973 the GPSC issued advertisement for 17 posts for GLO. However, the respondent No.3 Shri AK Patel did not choose to apply for regular appointment. Pursuant to the said selection, 17 candidates were selected by the GPSC. Along with respondent No.3, other persons were also appointed on ad hoc basis in the year 1972 and out of the original ad hoc appointees, 14 had either resigned or their services had been terminated due to availability of regular appointees.

However, for the reasons best known to them, the respondent No.3 Shri AK Patel and Shri KC Patel were continued though they were required to be removed due to availability of regular appointees. In the year 1975 again, the GPSC had issued advertisement for regular appointment of GLOs in which selection process also, the respondent No.3 did not choose to appear and six persons were appointed as GLOs on regular basis. Still the respondent No.3 came to be continued on *ad hoc* basis. In the year 1976, when the GPSC issued advertisement again for regular appointment of GLOs, for the first time, the respondent No.3 applied knowing fully well that by that time he was age barred and he was not allowed to compete on the ground of his being over age. It appears

that in the year 1981, when the service of the respondent No.3 was sought to be terminated on the ground that regular selected candidates are available, at that stage, he preferred Special Civil Application No.3615 of 1981 for an appropriate writ, direction and/or order directing the respondent authorities not to terminate his service and to regularize his service for the post of GLO contending inter alia that as per the rule 8 read with rule 16 of the Rules 1967, he is entitled to age relaxation and that he has been continued in service for more than nine years and that when he applied for appearing in the examination conducted by the GPSC, his case has not been considered as by then he has become age barred. At this stage, it is to be noted that though in the petition there are averments that "in the meantime two batches of officers directly selected by the GPSC as GLOs were appointed", but there are no specific averments and/or pleadings to the effect that in between i.e. in the year 1973 and 1975, the respondent No.3 did not apply. On going through the judgment and order passed by the learned single Judge rendered in Special Civil Application No.3615 of 1981, it appears to the Court that the respondent No.3 has suppressed the material fact that he did not apply in the year 1973 and 1975 and an impression was given that the GPSC conducted the examination in the year 1976 for the first time after his appointment on *ad hoc* basis and by the time, he has become age barred. The learned advocate appearing on behalf of the petitioners is right in submitting that there was a suppression of material fact on the part of the respondent No.3. As stated above, Shri Patel, learned advocate appearing on behalf of the respondent No.3 has tried to submit that there was no suppression of material fact and it was pointed out that in between there were two batches of officers appointed by the GPSC as GLOs. At this

stage, it is required to be noted that in Special Civil Application No.8991 of 1993 filed by the respondent No.3, it is specifically submitted in the said Special Civil Application that "meanwhile the petitioner accordingly applied to GPSC in the year 1976 when the first selection by the GPSC was held in the year 1976." Thus, it appears to the Court that the respondent No.3 suppressed the material fact and did not point out to this Court that he did not apply in the year 1973 and 1975. If the respondent No.3 Shri AK Patel would have pointed out to the Court that in the year 1973 and 1975, he did not apply for the GPSC examination, this Court while considering the same might not have even considered the question of relaxation of age. Be that as it may, the respondent No.3 approached this Court for the first time in the month of September 1981 praying for regularizing his service for the post of GLO and also challenging the order of termination by way of Special Civil Application No.3615 of 1981. The said Special Civil Application came to be allowed by the learned single Judge of this Court by judgment and order dated 26-2-1992 directing the respondent Government authorities to regularize the service of the petitioners (Shri AK Patel and Shri KC Patel) in the post of GLO by observing that the age limit could have been relaxed by the State Government as per rule 16 (III) read with rule 8(5) of the aforesaid Rules. It is also required to be noted that being aggrieved by the judgment and order passed by the learned single Judge passed in Special Civil Application No.3615 of 1981, the State Government in fact preferred LPA No.533 of 1993 before the Division Bench of this Court submitting that while issuing the direction to regularize the service of the original petitioners (Shri AK Patel and Shri KC Patel), there was no direction as regards fixation of seniority and this will create complications. However,

the Division Bench of this Court while dismissing the aforesaid LPA and dealing with the above submission, observed that the said apprehension has no merit and that the services of the respondents (Shri AK Patel and Shri KC Patel) are to be regularized in accordance with law and their ***seniority may be fixed in accordance with law and in just and fair manner.*** That thereafter, the respondent No.3 preferred Special Civil Application No.8991 of 1993 directing the said authorities to promote him to the post of ACL and to consider his case of deemed date of promotion to the said post and give him all consequential benefits flowing from the judgment and order passed in Special Civil Application No.3615 of 1981 and the learned single Judge while allowing the said Special Civil Application considered the fact that LPA against the judgment and order passed in Special Civil Application No.3615 of 1981 has been dismissed and therefore, directed the respondent authorities to fix the seniority of the respondent No.3 in accordance with law and in a just and fair manner. This Court also further passed an order that the same must be preceded by an order of regularization and after regularization, his seniority should be dealt with in the aforesaid lines with all consequential benefits. However, this Court also further observed that the task of fixation of seniority etc. should be completed within one month and thereafter, based on that, the question of promotion of the petitioners to the post of Deputy Commissioner of Labour should also be considered, particularly with reference to case of Shri NH Dave, who was promoted as ACL on 21-4-1982 and his case also should be considered for deemed date while considering his case for promotion. That thereafter, the order dated 27-6-1994 came to be passed regularizing the service of the respondent No.3 in the cadre of GLO i.e. w.e.f. the date next to expiry of two years period

from the date of joining the service i.e. right from 1974. It is required to be noted that the said order dated 27-6-94 has been passed without giving any opportunity to the petitioners. The petitioners of Special Civil Application No.2426 of 1995 apprehended that Shri AK Patel and Shri KC Patel would be placed above them in the seniority list of GLO and they are likely to be promoted in the matter of promotion to the post of ACL and then to the post of Deputy Commissioner of Labour and therefore, they preferred Special Civil Application No.7757 of 1994, wherein an affidavit-in-reply came to be filed on behalf of the State Government, more particularly by Shri VR Rana, Deputy Secretary to the Government of Gujarat, Labour and Mines submitting that by order dated 27-6-1994, only an order regularizing the service of the respondent No.3 has been passed and further order with regard to seniority etc. has not been passed and therefore, while disposing of the Special Civil Application, the learned single Judge directed the State Government to consider the requests of the petitioners Shri AK Patel and Shri KC Patel and to determine the seniority of Shri AK Patel and Shri KC Patel viz-a-viz the petitioners and to consider the judgments referred to in the representation. That thereafter, the impugned order has been passed by order dated 23rd March 1995 and the operative portion of the order reads as under:

> ***"Accordingly Government is pleased to confirm the orders contained in the Government Resolution No. CLE-1182/1880-M-I dated 14/18th December 1989 showing Shri AK Patel at serial No.46 in the final seniority list of the GLO as on 21-1-1983. The Government is also pleased to give hereby the date of 21-4-1982 as deemed date of Shri AK Patel's promotion to the post of ACL (that being the date of promotion of his junior Shri NH Dave to the said post of ACL) with the benefit of permitting Shri AK Patel to draw the difference of his pay and allowance consequent upon***

his promotion to the post of ACL from the said deemed date of promotion i.e. 21-4-1982 onwards."

14. Thus, by the impugned order, said Shri AK Patel was placed above the petitioners of Special Civil Application No.2426 of 1995 (those who were appointed as GLO after their selection by the GPSC) and also above the petitioners of Special Civil Application No.3106 of 1995 (those who were appointed in the year 1982 in the cadre of ACL selected by the GPSC) and consequently Shri AK Patel came to be further promoted to the post of ACL by deemed date of promotion as ACL as 21-4-1982 and thereafter consequently promoted to the post of Deputy Commissioner of Labour. Therefore, the question which is required to be considered by this Court is whether the respondent authorities were justified in considering the period between 1972 to 1994 i.e. the period prior to the order of regularization of Shri AK Patel for the purpose of seniority and his appointment of substantive post and that too above those persons who were appointed as GLOs in the year 1977 selected by the GPSC and even above those ACLs who were appointed in the year 1982 as ACL selected by the GPSC i.e. much prior to the order of regularization of Shri AK Patel as GLO (much prior to 26-7-1994).

15. It is required to be noted that all throughout and more particularly when this Court disposed of Special Civil Application Nos.3615 of 1981 and 8991 of 1993, neither the petitioners of Special Civil Application No.3106 of 1995 nor the petitioners of Special Civil Application No.2426 of 1995 were heard. It is also required to be noted that even, while allowing the Special Civil Application No.3615 of 1981, this Court did not pass any order to regularize the service of Shri AK Patel from

retrospective date. Even in Special Civil Application No.8991 of 1993, this Court directed to determine the ***seniority in accordance with law and fair play***. However, some passing observations were made to consider the case in line with Shri NH Dave without there being any specific Lis . In the said Special Civil Application, this Court did not decide any *inter se* controversy with regard to seniority and/or the promotion. The said question was not under consideration of the learned single Judge. Any observations are required to be considered in the facts of that case and the controversy raised in the Special Civil Application and for that there must be a Lis between the parties. As stated above, there was no dispute with regard to *inter se* seniority and even, otherwise when the petitioners were not the party to the said Special Civil Application, any observations made by this Court is not binding to them and they can make a grievance as and when it affects to them. Under the circumstances, the contention on behalf of the respondent No.3 Shri AK Patel that once the order dated 27-6-1994 has become final and the decision of the learned single Judge in Special Civil Application No.8991 of 1993 has become final, it is not open for the petitioners to make a grievance subsequently, cannot be accepted. On the contrary, when the petitioners of Special Civil Application No.2426 of 1995 made a grievance by way of Special Civil Application No.7757 of 1994, it was specifically submitted by the State Government that the seniority is not determined and only order of regularization has been passed and therefore, this Court directed the State Government to determine the question of seniority after considering the representation of the petitioners of Special Civil Application No.2426 of 1995 and considering the judgments referred to in the representation. Not only that but when against the decision of the learned single Judge in Special Civil

Application No.3615 of 1981, the State Government preferred LPA No.533 of 1993 it was specifically that as there is no direction by the learned single Judge with regard to the seniority, it might create complications in future, however, the Division Bench of this Court while dismissing the said LPA, observed that the said apprehension is not well-founded and that the seniority is to be decided in ***accordance with law*** and ***in just and fair manner***. Under the circumstances, submission on behalf of the respondent No.3 that the petitioners cannot make a grievance now, has no substance and cannot be accepted. Even on going through the impugned order dated 23rd March 1995, it appears that the said order is non-speaking order and no reasons have been assigned by the authority. In spite of the fact that the decisions of the Hon'ble Supreme Court in the case of Dr. M.A. Haque and others (supra) and Direct Recruit Class II Engineering Officers' Association (supra) were pressed into service, the authority has ignored the aforesaid two decisions which, otherwise the authority was required to consider even as per the direction of this Court in Special Civil Application No.7757 of 1994. That the authority simply relied upon the observations made by the learned single Judge in Special Civil Application No.8991 of 1993 without determining the seniority in accordance with law and fair play and without even considering the objections raised by the petitioners.

Legal Position:

In the case of Santoshkumar and others (supra), the Hon'ble Supreme Court has held that the seniority of the *ad hoc* appointees to be reckoned from the date of their substantive appointment. It is held by the Hon'ble Supreme Court that the *ad hoc* appointment cannot be deemed to

be substantive appointment and such appointee is to be placed below the direct recruitees appointed prior to their regularization. It is required to be noted that in the said decision, the Hon'ble Supreme Court had considered the decision in the case of Direct Recruit Class II Engineering Officers' Association (supra) and has not approved the said decision. In the said case, the contention on behalf of the *ad hoc* appointees relying upon the decision in the case of Direct Recruit Class II Engineering Officers' Association (supra) that entire length of service is required to be considered for the purpose of seniority came to be negatived by the Hon'ble Supreme Court and the order of the High Court holding that *ad hoc* services cannot be counted for the purpose of seniority, came to be confirmed.

16. In the case of Lalita S. Rao and others (supra), the Hon'ble Supreme Court again considered the question of seniority of the *ad hoc* promotees subsequently regularized and the Hon'ble Supreme Court has held that service rendered prior to regularization is not required to be counted for the purpose of seniority in the cadre. In the said decision, the Hon'ble Supreme Court considered all the earlier decisions in the case of Direct Recruit Class II Engineering Officers' Association (supra); M.A. Haq (Dr.) (supra) and Dr. A.K. Jain’s case. In the case of Dr. M.A. Haq (supra), the Hon'ble Supreme Court directed that the seniority of the direct recruitees, both outsiders and insiders should be determined according to the post of their regular appointment through the UPSC and that they shall be placed in the seniority list after those direct recruitees who are recruited till that date.

17. Even in the case of Direct Recruit Class II Engineering Officers' Association (supra), the Hon'ble Supreme Court has held that when initial appointment is only *ad hoc*, made as a stopgap arrangement and not according to the rules, the officiation in such post cannot be taken into count for considering the seniority. It is required to be noted that the learned advocates appearing for both the parties have relied upon the decision in the case of Direct Recruit Class II Engineering Officers' Association (supra).

18. The learned advocate appearing for the respondent No.3 Shri AK Patel has submitted that as the initial appointment of Shri Patel was by selection committee, in which representative of the GPSC was present and even thereafter, when the order of regularization was also passed the same way in consultation with GPSC, the case of Shri AK Patel would be covered in terms of para 47(B) Direct Recruit Class II Engineering Officers' Association (supra). However, it is the contention on behalf of the learned advocate appearing on behalf of the petitioners that their case would be covered by para 47(A) of the said judgment. It is required to be noted that as per the recruitment rules, post of GLO is required to be filled in by a candidate selected by the GPSC after appearing in GPSC examination and not by any other selection committee. Even, otherwise, it is required to be noted that in the initial appointment of 1972, Shri AK Patel was appointed on purely *ad hoc* basis till regularly selected candidates selected by the GPSC is available. Thus, the appointment of Shri AK Patel in the year 1972 was made as a stopgap arrangement and was only *ad hoc* and not according to the rules. The officiation of Shri AK Patel in such post cannot be taken into count for considering the seniority as held by the Hon'ble Supreme Court in para 47(A) of the

decision in the case of Direct Recruit Class II Engineering Officers' Association (supra).

19. In the case of Vijay K. Dhand and others (supra), the Hon'ble Supreme Court negatived the claim of *ad hoc* appointee for regularization from the date of their initial appointment.

20. In the case of R.S. Garg (supra), even the Hon'ble Supreme Court has held that appointment made without applying rules which provided for selection through PSC, the appointment would be *void ab initio* and incapable of regularization. Even recently in the case of Umadevi and others (supra), the Hon'ble Supreme Court has held that Court should not issue direction of regularization unless the recruitment itself was made regularly and in terms of constitutional scheme. Under the circumstances, even the service of Shri AK Patel could not have been regularized, as he has never passed GPSC examination. However, as the judgment and order passed in Special Civil Application No.3615 of 1981 has become final and the service of Shri AK Patel was regularized in the year 1994, this Court is not considering it further. However, certainly the period prior to regularization cannot be considered for the purpose of seniority in the cadre of GLO.

21. Shri Patel, learned advocate appearing for Shri AK Patel has relied upon the decision in the case of Rudrakumar Sain (supra). However, the said decision came to be considered by the Hon'ble Supreme Court in the case of Vijay K. Dhand (supra) and thereafter the aforesaid decision was taken. Similarly, all other decisions which are relied upon by the learned

advocate appearing for Shri AK Patel are considered by the Hon'ble Supreme Court in subsequent decisions referred to hereinabove. The reliance placed upon the decision in the case of Santoshkumar (supra) is concerned, the facts in the said decision were that the Head Constables were appointed temporarily and their case were falling within para 47 (B) of the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association (supra). As stated above, so far as the present case is concerned, the case of Shri AK Patel would fall within para 47(A) of the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association (supra) and therefore, the decision in the case of Santoshkumar (supra) would not be of any assistance to Shri AK Patel. So far as the decisions relied upon in the case of SK Dhingara and others (supra) is concerned, the same will also not be applicable to the facts of the present case as the said judgment is on the facts of that case and the facts in the present case are different. Similarly, the decision of the Hon'ble Supreme Court in the case of GP Doval and others (supra) also will not be helpful to the respondent No.3 Shri AK Patel, as the facts in the said decision are different then those of the present Special Civil Application.

22. Now considering the facts of the case on hand and the initial appointment of Shri AK Patel in the year 1972 in the cadre of GLO on purely *ad hoc* and stopgap till the regularly selected candidates selected by the GPSC is available and when the said Shri Patel did not apply for the GPSC examination conducted in 1973 and 1975 and in the meantime, GPSC selected candidates were available, still he was continued in service and for the first time, he approached this Court in the year 1981

for regularization when his services were sought to be terminated and this Court allowed the Special Civil Application No.3615 of 1981 on 26-2-1992 and when order of regularization in the cadre of GLO in favour of Shri AK Patel came to be passed on 27-6-1994, the period between 1972 to 1994 while Shri AK Patel had continued to work on *ad hoc* basis is not required to be counted for the purpose of seniority in the cadre of GLO and his seniority in the cadre of GLO is required to be considered only w.e.f. 27-6-1994. It is required to be noted that appointment in the cadre of GLO is required to be made on the basis of the competitive examination conducted by the GPSC and only those candidates selected by the GPSC are required to be appointed as GLO on regular basis and admittedly Shri AK Patel has not passed GPSC examination and is not selected by the GPSC and only because of the direction issued by this Court dated 27-6-1992 passed in Special Civil Application No.3615 of 1981, the service of respondent No.3 Shri AK Patel came to be regularized. Under the circumstances, considering the aforesaid decisions of the Hon'ble Supreme Court, the seniority of Shri AK Patel is required to be considered from the date of regularization and only from the date of his appointment of regularization.

23. There is another reason also why the respondent No.3 Shri AK Patel is not required to be placed above the petitioners of Special Civil Application No.3106 of 1995 and petitioners of Special Civil Application No.2426 of 1995. So far as the petitioners of Special Civil Application No.3106 of 1995 are concerned, they are all appointed as ACL in the year 1982 on permanent basis duly selected by the GPSC. Now by virtue of the impugned order and regularizing the service of respondent No.3 Shri

AK Patel after completion of two years of his initial appointment right from 1974 and on giving the seniority to the respondent No.3 Shri AK Patel in the cadre of GLO right from 1974, the respondent No.3 Shri AK Patel has been given deemed date of promotion in the cadre of ACL as 21-4-1982 and consequently the respondent No.3 Shri AK Patel is shown above the petitioners of Special Civil Application No.3106 of 1995 and even given the further promotion to the post of Deputy Commissioner of Labour immediately on the next date of passing the impugned order i.e. on 24th March 1995. Even assuming that the alternative prayer of the petitioners of Special Civil Application No.3106 of 1995 is considered and the seniority of Shri AK Patel is fixed on the basis from 1978 or from 1976 when for the first time, the respondent No.3 had chosen to appear before the GPSC, in that case also, the respondent No.3 could not have been given the deemed date in the cadre of ACL of 21-4-1982. Respondent No.3 cannot march over in the cadre of ACL and get further promotion in the cadre of DCL above those persons who are appointed as ACL on regular basis much prior to the respondent No.3 got the promotion as ACL.

24. So far as the petitioners of Special Civil Application No.2426 of 1995 are concerned, it is required to be noted that they were appointed as GLO in the year 1977 duly selected by the GPSC and on regular basis and the respondent No.3 Shri AK Patel has been given the seniority in the cadre of GLO right from 1974 and accordingly they were placed above the petitioners of Special Civil Application No.3106 of 1995, though, the respondent No.3 has not passed the GPSC examination and though the petitioners of Special Civil Application No.3106 of 1995 have passed the

GPSC examination much prior to the date of regularization of respondent No.3 Shri AK Patel. Thus, the respondent No.3 Shri AK Patel though having not passed the GPSC examination, cannot be permitted to march over those GLOs who were appointed on regular basis and selected by the GPSC. Such an action would be giving a premium to the illegality.

25. Considering the above facts and the decisions of the Hon'ble Supreme Court as referred to hereinabove, the action of the respondents in considering the period prior to regularization in the cadre of GLO i.e. prior to 27-6-1994 for the purpose of seniority in the cadre of GLO is required to be quashed and set aside and consequently their seniority *inter se* is required to be re-fixed fixing the seniority of the respondent No.3 Shri AK Patel in the cadre of GLO from 27-6-1994 i.e. the date on which the order of regularization in favour of respondent No.3 Shri AK Patel is passed and further consequential orders are to be passed.

26. At this stage, Shri KM Patel, learned advocate appearing on behalf of the respondent No.3 Shri AK Patel has submitted that if at this stage after a period of 12 years, the *inter se* seniority is to be re-fixed and the seniority of the respondent No.3 Shri AK Patel in the cadre of GLO is required to be fixed w.e.f. 21-6-1994, in that case, the position in the cadre of GLO and in the cadre of ACL would be affected and he might have to be reverted after a period of almost 11 years and therefore, he has requested to consider the same. It is required to be noted that because of delay in deciding the Special Civil Applications, the petitioners and other persons cannot be made to suffer. If in the year 1995, the respondent No.3 Shri AK Patel would have been placed at an appropriate place in the

seniority list in the cadre of GLO by considering his seniority only from the date of regularization in light of the decisions of the Hon'ble Supreme Court, in that case, the petitioners would have got promotion in the cadre of Deputy Commissioner of Labour and ACL much earlier and in fact, all those petitioners have suffered a lot. As such the respondent No.3 Shri AK Patel has already enjoyed the fruits by getting promotion in the cadre of ACL and thereafter Deputy Commissioner of Labour for more than 10 years, which he was not entitled to and to further continue the said illegality would be to further perpetrate the illegality to the detriment of the petitioners for no fault of them. Under the circumstances, whatever the consequences of re-fixation of the seniority in the cadre of GLO as stated above, must follow. At this stage, the decision of the Hon'ble Supreme Court in the case of ***K.P. Sudhakaran V. State of Kerala reported in (2006) 5 SCC 386*** is required to be referred to. The Hon'ble Supreme Court in the said judgment has negatived the very submission/ argument made on behalf of Shri AK Patel. The Hon'ble Supreme Court has observed that delay in disposal cannot defeat the rights of the petitioners. At this stage, another decision of the Hon'ble Supreme Court in the case of ***State of Karnataka and others V. C. Lalitha reported in (2006) 2 SCC 747*** is also required to be referred to. While dealing with grant of relief and concept of justice, the Hon'ble Supreme Court has observed that justice demands that a person should not be allowed to derive any undue advantage over other employees. It is also further observed by the Hon'ble Supreme Court that the concept of justice is that one should get what is due to him or her in law and the said concept cannot be stretched so as to cause heart-burning. In the present case, the respondent No.3 Shri AK Patel has already enjoyed the fruits of the

impugned order which he was not entitled to. At the end of the day, when the petitioners have got what could be given to them in law as stated above, they cannot be deprived of their legitimate right only because there is a delay in disposal of the present Special Civil Application.

27. For the reasons stated above, both the petitions i.e. Special Civil Application No.3105 of 1995 and Special Civil Application No.2426 of 1995 are allowed. The impugned order dated 23-3-1995 and the action of the respondent authorities in considering the period between 1972/1974 till 27-6-1994 (till the date of regularization) for the purpose of seniority of the respondent No.3 Shri AK Patel in the cadre of GLO are hereby quashed and set aside. All further consequential orders, such as promotion of respondent No.3 Shri AK Patel on the post of ACL and Deputy Commissioner of Labour are also hereby quashed and set aside and the respondent authorities are directed to consider the seniority of the respondent No.3 Shri AK Patel in the cadre of GLO from 27-6-1994 (the date on which the order of regularization of Shri AK Patel in the cadre of GLO has been passed). The respondent authorities are further directed to re-fix the seniority in the cadre of GLO accordingly and consequently seniority list in the cadre of ACL and Deputy Commissioner of Labour etc. The entire exercise to be completed within a period of two months from today. Whatever the consequences of re-fixation of the seniority in the cadre of GLO as stated above, must follow within a period of two months from today. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

(M.R. SHAH, J.)

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FURTHER ORDER

At this stage, Shri K.M.Patel, learned advocate appearing for Shri A.K.Patel – respondent No.3 herein requests to grant the stay of further implementation and operation of the present judgment and order for a further period of 4 weeks. In the facts and circumstances of the case, more particularly, in view of the fact that the respondent No.3 has already enjoyed the fruits of illegality at the cost of others and more particularly, in view of the fact and it was submitted that the respondent No.3 is to retire in the month of June or July 2007, granting of stay of further implementation and operation of the present judgment and order would be to give further premium to the illegality and continue the illegality in favour of the respondent No.3, as if the present judgment and order is stayed, in that case, the respondent No.3 would be continued on the post which he is not entitled to and after retirement it can be said that now nothing further is required to be done. Under the circumstances, the prayer to grant the stay of the implementation and operation of this judgment and order is rejected.

(M.R. SHAH, J.)

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